

NTSB Order No. EA-3621

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 6th day of July, 1992

Respondent .

)
)
)
)
)
)
)
) Docket SE-9006
)
)
)
)
)
)
)
)

5677A

the Administrator that there would be benefit in doing so, in view of our uniform policy of dismissing untimely appeals, absent a showing of good cause. Administrator v. Hooper, NTSB Order No. EA-2781 (1988).

The timeliness of respondent's appeal is raised in this case by the procedure used by the law judge. His first order (affirming the Administrator's order of suspension) was issued at the close of the hearing on September 6, 1989. However, he then held the record open and, upon receipt of additional evidence, issued a further, written order on October 17, 1989. In the September order, the law judge explained:

Let the record indicate that I wish to clarify the time constraints here where an appeal is concerned. The record will remain open until October 15, 1989, to enable the respondent to submit any evidence in writing on behalf of respondent Ricky L. Teague. If there is no evidence submitted, the appeal time--10 days to file a Notice of Appeal and 50 days to perfect that appeal--shall immediately become operative starting with the date of October 15, 1989. . . . If there is an affirmance or a modification, or vacating, for that matter, then the appeal time for the parties will run from the date of my order affirming, modifying or vacating.

Tr. at 104. The October order (at 1) stated that "the appeal time becomes operative upon receipt of this order."

Respondent's brief was dated December 6, 1989, 50 days from October 17. As the Administrator notes, if the October order were treated as a written decision under 49 C.F.R. 821.48(a), respondent's brief would have been due 30 days from October 17. Thus, it would have been late-filed on December 6.¹ Under the circumstances, we do not find that § 821.48 prohibits consideration of respondent's appeal.

We agree with the Administrator that the law judge's instructions could have been interpreted to allow the filing on December 6. Although respondent's counsel (or the Administrator's, for that matter) could have sought informal clarification from the law judge, it was not unreasonable for respondent to have interpreted the law judge's language as he did. The October written decision is not the type of written decision generally understood under § 821.48; it was the September decision that contained the law judge's findings and analysis. However, it was not unreasonable to conclude that the 50-day time period should run from October, as the wording of the

¹And, if the 50 days from the date of the September oral decision were applied, it also would have been late.

law judge's order is easily interpreted this way. Moreover, neither party could be certain of the judge's ultimate ruling until the October order and prepare to appeal (or defend) it. Thus, we conclude that respondent's appeal was timely filed. Respondent should not be penalized for the confusion that occurred here.² Accord Administrator v. Andreolas, NTSB Order EA-3446 (1992), at note 3.

ACCORDINGLY, IT IS ORDERED THAT:

The Administrator's petition for modification is granted as set forth in this order.

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

²We note that the Administrator recognizes the propriety of accepting respondent's brief here.